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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/516,851	12/03/2004	Alfons Bockmann	MY-27PCT	7267
40570	7590	12/17/2007		
FRIEDRICH KUEFFNER 317 MADISON AVENUE, SUITE 910 NEW YORK, NY 10017			EXAMINER O HERN, BRENT T	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 12/17/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/516,851	<b>Applicant(s)</b> BOCKMANN ET AL.	
	<b>Examiner</b> Brent T. O'Hern	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 4 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claims*

1. Claims 1-2 and 4-7 are pending.

## WITHDRAWN REJECTIONS

2. The 35 U.S.C. 112, second paragraph, rejections of claims 1-7 of record in the Office Action mailed 3 August 2007, page 2, paragraph 6, have been withdrawn due to Applicant's amendments in the Paper filed 7 November 2007.
3. The 35 U.S.C. 102(b) rejections of claims 1-3 and 5-7 as being anticipated by Barsotti (WO 00/49072) of record in the Office Action mailed 3 August 2007, page 3, paragraph 7, have been withdrawn due to Applicant's amendments in the Paper filed 7 November 2007.
4. The 35 U.S.C. 102(b) rejections of claims 1 -5 and 7 as being anticipated by Touhsaent et al. (US 5,827,615) of record in the Office Action mailed 3 August 2007, page 5, paragraph 7, have been withdrawn due to Applicant's amendments in the Paper filed 7 November 2007.

## NEW OBJECTIONS

### *Claim Objections*

5. Claim 4 is objected to because of the following informalities: claim #4 depends on cancelled claim #3. Appropriate correction is required.
6. Claim 6 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper

dependent form, or rewrite the claim(s) in independent form. The coating thickness of claim #4 is the same as in claim #1.

7. Claim 6 is objected to because of the following informalities: the last range in the last line was deleted and replaced with a new range without any markings indicating said amendment. Appropriate correction is required.

### **NEW REJECTIONS**

#### ***Claim Rejections - 35 USC § 112***

8. Claims 1-2 and 4-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

9. The phrase "coating being largely adapted to material and possibly to the contents of the container with respect to its properties, selected from mechanical strength, thermal expansion, and chemical resistance" in claim 1, lines 14-18 is vague and indefinite as it is unclear where the "adapted to" is taking place and what structure "selected from mechanical strength, thermal expansion, and chemical resistance" is referring to.

10. The phrase "wherein the coating materials used for the coating materials used for the coating are based on modern epoxy resins or amine adducts" in claim 1, lines 19-21 is vague and indefinite since it is unclear what "coating materials" the phrase is referring to.

Clarification and/or correction is required.

***Claim Rejections - 35 USC § 102***

11. Claims 1-2 and 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Barsotti (WO 00/49072).

Regarding claims 1, 2, 4-5 and 7, Barsotti ('072) teaches a plastic container made of polyolefins, with a coating on an exterior and/or interior surface that has oxygen barrier properties with the coating comprising epoxy resins or amine adducts (*See p. 4, ll. 19-27, p. 4, ll. 10, ll. 10-14, p. 6, ll. 1-8 and p. 7, ll. 17-28 a plastic container with the above coating composition.*) and wherein the thickness of the finished coating (30) varies from about 0.003 mm to 0.03 mm (*See p. 27, l. 27 to p. 28, l. 3 wherein 0.3 mil equals 0.00762 mm.*).

The phrase "for the packaging and long-term storage of food products the container comprising to reduce the amount of oxygen penetrating the plastic container in a closed portion thereof" in claim 1, lines 2-9 is deemed to be a statement with regard to the **intended use** and is not further limiting in so far as the structure is concerned (*see MPEP 2111.02*).

The phrase "and material of the coating (30) being largely adapted to material and possibly to the contents of the container with respect to its properties selected from mechanical strength, thermal expansion, and chemical resistance wherein the coating materials used for the coating are based on modern epoxy resins or amine adducts" in claim 1, lines 13-21 is not given any patentable weight as it is interpreted as **optional** language and does not positively set forth any structural limitations.

The phrases "wherein the coating is applied by spray coating and/or dip coating only the outer surface or the entire freely accessible surface of the plastic container in

one operation" in claim 2, lines 2-5 and "wherein, after it has been applied to the container surface, the coating is subjected to an aftertreatment that consists, for example, of heating or UV irradiation for the purpose of drying it or curing it" in claim 5, lines 2-6 are **process limitations** in product claims and hence not given any patentable weight since patentability of a product does not depend on its method of production (see *MPEP* § 2173.05(p)).

Claim #4 depends on cancelled claim #3, thus, the claim is directed to further limiting an unknown product with unknown structure.

Regarding claim 7, Barsotti ('072) teaches wherein the surface to be coated is pretreated (*See p. 7, ll. 33 to p. 8, l. 4.*).

The phrases "wherein the container surface to be coated is pretreated, by flame treating, before it is coated and is then, for example, fat-free and/or dust-free and/or roughened" in claim 7, lines 2-5 are **process limitations** in a product claim and hence not given any patentable weight since patentability of a product does not depend on its method of production (see *MPEP* § 2173.05(p)).

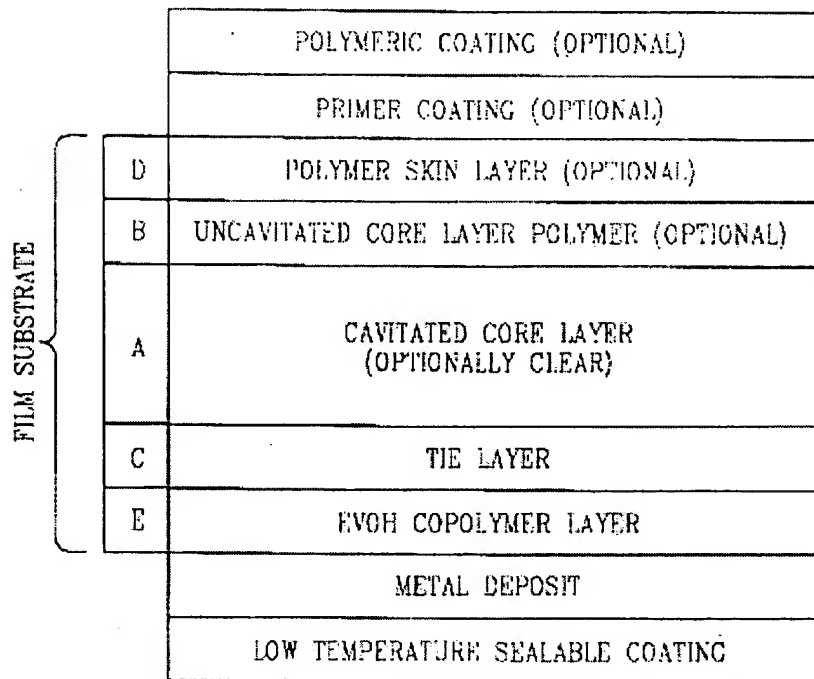
The phrase "before it is coated and is then, for example, fat-free and/or dust-free and/or roughened" in claim 7, lines 4-5 is **optional**, thus not limiting.

**12.** Claims 1-2, 4-5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Touhsaent et al. (US 5,827,615).

Regarding claims 1, 2, 4 and 5, Touhsaent ('615) teaches a plastic container made of polyolefins, with a coating on an exterior and/or interior surface that has oxygen barrier properties with the coating comprising epoxy resins or amine adducts (*See FIG on the front page of the patent, col. 2, ll. 23-58, col. 7, ll. 40-49, a plastic*

container with the above coating composition and wherein one of the individual layers is a layer produced by metallization (See col. 5, ll. 21-25 and 65-67.).

FILM CROSS SECTION



Claim #4 depends on cancelled claim #3, thus, the claim is directed to further limiting an unknown product with unknown structure.

NOTE: the process limitations, intended use language, etc. discussed above is applicable for the rejections over Touhsaent ('615).

Regarding claim 7, Touhsaent ('615) teaches wherein the surface to be coated is pretreated (See col. 5, ll. 26-32.).

### ANSWERS TO APPLICANT'S ARGUMENTS

13. In response to Applicant's arguments (*pp. 9-13 of Applicant's Paper filed 7 November 2007*) discussing the Barsotti ('072) and Touhsaent ('615) references, it is firstly noted that the amended claims are discussed above.

Furthermore, it is noted that the arguments are narrative discussing the teachings of the cited references and general background regarding Applicant's claims, however, Applicant does not precisely address the claimed structural limitations and present precise analysis wherein the limitations are not taught by the cited references. Additionally, Applicant goes into some detail discussing the metal layer (*pp. 10-11 of Applicant's Paper filed 7 November 2007*) of claim #4, however, it is noted as discussed above that said claim depends on cancelled claim #3. Additionally, it is noted that Touhsaent ('615) clearly teaches said properties as explained in the previous Office Action.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of



the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571) 272-0496. The examiner can normally be reached on Monday -Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-0996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Brent T O'Hern  
Examiner  
Art Unit 1794  
December 10, 2007

  
NASSER AHMAD  
PRIMARY EXAMINER 12/13/07